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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,758	10/17/2003	Michael T.K. Ling	FLM-5686A	1992

7590 06/07/2007  
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EXAMINER
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HAIDER, SAIRA BANO

ART UNIT	PAPER NUMBER
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1711

MAIL DATE	DELIVERY MODE
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06/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/688,758

Applicant(s)

LING ET AL.

Examiner

Saira Haider

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-13,15,16,18-20,22,24-26 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,15,16,20,22,24-26,28-33 and 36-37 is/are allowed.
- 6) ☒ Claim(s) 1-2, 5-13, 18, 19, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>20070604</u> .                           |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                          |

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-2, 5-13, 18, 19, 34 and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,869,653. Although the conflicting claims are not identical, they are not patentably distinct from each other because regarding the outermost layer, the claims herein and those of the patent claim are drawn to the same components, but in different amounts. The herein claimed ranges are narrower than those patented, however, the enabling disclosure of the patent guides one to function within the narrower range claimed by applicant herein. In regards to the solution contact second layer, the claims herein encompass the patent claims, specifically; the claims herein are broader than those claims. In reference to herein claim numbers 9-13, 34, and 35, the enabling specification of the patented claims makes obvious these limitations.

*Allowable Subject Matter*

3. Claims 4, 15, 16, 20, 22, 24-26, 28-33, and 36-37 are allowed.
4. The following is an examiner's statement of reasons for allowance:
5. In reference to claims 4, 15, and 16 the closest prior art references fail to disclose or render obvious the claimed polymer blend of the second layer. Wherein the closest prior art discloses the claimed polymer blend of the second layer as a tie layer, it would not have been obvious to one of ordinary skill in the art to utilize the tie layer as the solution contact layer.
6. In reference to independent claim 20 and the claims depending therefrom, the closest prior art references fail to disclose or render obvious the claimed outermost second layer, as correctly argued by applicant in Section 2 of the Remarks filed on 3/26/2007
7. Claims 1-2, 5-13, 18, 19, 34 and 35 would be allowable if a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) is used to overcome the nonstatutory obviousness-type double patenting rejection(s), set forth in this Office action.
8. The following is an examiner's statement of reasons for allowance:
9. The primary reason for the allowance of the claims is the inclusion of the limitation "the second layer in direct and intimate contact with the first layer." The inclusion of this limitation precludes the presence of an intermediate layer between the claimed first and second layers. The closest prior art references Woo and Laurin fail to expressly disclose or in combination teach a solution contact second layer in direct and intimate contact with the claimed first layer. It is not known in the art to eliminate the presence of the intermediate tie layer between the first and second layers, there is no motivation to do so, nor would it have been obvious to one of ordinary skill at the

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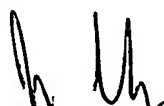
time of the invention. Hence, inclusion this specific limitation is regarded as novel and unobvious over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saira Haider whose telephone number is (571) 272-3553. The examiner can normally be reached on Monday-Friday from 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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Saira Haider  
Examiner  
Art Unit 1711